



Staff Report

RESOLUTION APPROVING THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF BELMONT AND SCOTT M. RENNIE AS CITY ATTORNEY

Honorable Mayor and Council Members:

Summary

The City Council desires to appoint Scott M. Rennie as the City of Belmont's first full-time in-house City Attorney. An employment agreement has been negotiated (attached) with Mr. Rennie. Adoption of the attached resolution will authorize execution of this employment agreement.

Background

On December 17, 2010, former City Attorney Marc Zafferano, from the Law Firm of Aaronson, Dickerson, Cohn, and Lanzone (ADC&L) resigned as the City Attorney from the City of Belmont. On January 11, 2011, the City Council approved a resolution authorizing a professional services agreement with Kathleen A. Kane, of the same law firm, for attorney services as Belmont's Interim City Attorney. Ms. Kane was appointed Interim City Attorney effective February 1, 2011 pending the recruitment and selection of the full-time in house City Attorney.

The City of Belmont's Human Resources Department facilitated the recruitment and selection without the assistance of an outside executive search firm (as a cost savings to the City) and worked under the direction of the ad hoc committee comprised of Mayor Coralin Feierbach and Council Member Christine Wozniak. In addition, City Manager Greg Scoles and Special Counsel Michael Colantuano were involved in the hire process.

The recruitment brochure was posted on CalOpps.org in March 2011 and various other advertisements/outreach were utilized including Western City, League of California Cities website, Jobs Available, and City Attorney Association direct mail/email. A number of highly qualified applicants expressed interest in Belmont's City Attorney position. A few select candidates were invited to participate in a selection process which included interviews conducted by the entire City Council. As a result of the process, Mr. Rennie was selected to be the City Attorney for Belmont.

Discussion

The basic terms of the agreement are as follows:

- The agreement is made and entered into as of the September 13, 2011 by and between the City of Belmont and Scott M. Rennie and will remain in force and effect until terminated as provided in the agreement.
- It specifies that the City hereby employs Mr. Rennie as City Attorney of the City to perform the functions and duties of the City Attorney as specified in City's Municipal Code and to perform such other legally permissible and proper duties and functions as the City Council may from time to time assign.
- Employee agrees to devote employee's full time and effort to the performance of the agreement and to remain in the exclusive employ of Belmont and not to otherwise become employed while the agreement is in effect without the prior written approval of the City Council.
- The hours of work consist of a regular work schedule of eight (8) hours per day, Monday through Friday and may involve expenditure of time in excess of eight hours (8) per day and/or forty (40) hours per week and may also include time outside normal offices hours such as attendance at City Council meetings.
- It specifies the salary and benefits being offered. Please refer to the agreement for details. The salary and benefits are within market for the City Attorney classification and provide for the successful recruitment and retention of a highly qualified city attorney.

General Plan/Vision Statement

No Impact.

Fiscal Impact

The compensation for City Attorney is budgeted and approved by the City Council.

Public Contact

Posting of City Council Agenda.

Recommendation

It is recommended that the City Council adopt the resolution approving the employment agreement between the City and Scott M. Rennie and appoint Mr. Rennie as Belmont's City Attorney.

Alternatives

1. Decline to approve the attached resolution approving the employment agreement and not appoint Mr. Scott M. Rennie.
2. Propose alternative agreement terms.
3. Take no action at this time.

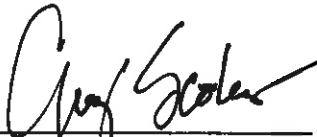
Attachments

- A. Resolution of the City Council of the City of Belmont Approving the Employment Agreement between the City of Belmont and Scott M. Rennie as City Attorney
- B. Employment Agreement for Scott M. Rennie

Respectfully submitted,



Corazon M. Dino
Human Resources Director



Greg D. Scoles
City Manager

Staff Contact:

Cora Dino, Human Resources Director
(650) 637-2988
cdino@belmont.gov

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
APPROVING THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF
BELMONT AND SCOTT M. RENNIE AS CITY ATTORNEY**

WHEREAS, the City Council appointed Kathleen A. Kane with Aaronson, Dickerson, Cohn & Lanzone as Interim City Attorney pending the recruitment and selection of the full-time in house City Attorney; and,

WHEREAS, the City Council authorized the Human Resources Department to recruit for a City Attorney and conduct a selection/ interview process; and,

WHEREAS, the City Council as the hiring authority can select and appoint at its discretion a qualified City Attorney.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belmont that the Agreement, attached hereto and by this reference made a part hereof, employing Scott M. Rennie as City Attorney and setting forth terms and conditions of employment is hereby approved and the Mayor is authorized and directed to execute the same on behalf of the City of Belmont.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on September 13, 2011 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont

EMPLOYMENT AGREEMENT FOR SCOTT M. RENNIE

THIS AGREEMENT is made and entered into as of the 13th day of September 2011 by and between the CITY OF BELMONT, California, a Municipal Corporation, hereinafter called the "City," and SCOTT M. RENNIE, hereinafter called "Employee."

RECITALS

A. City desires to retain the services of Employee in the position of City Attorney, and Employee desires employment as City Attorney of the City effective October 3, 2011 or such earlier date as Employee may communicate to City in writing ("Effective Date").

B. The City Council desires to:

- (1) Retain the services of Employee;
- (2) Encourage the highest standards of fidelity and public service on the part of Employee;
- (3) Provide a just means for terminating Employee's employment and this Agreement when City may desire to do so; and
- (4) Recognize Employee's accomplishments during his service to City.

C. The parties further desire to establish the Employee's conditions of employment.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained the parties agree as follows:

1. Duties. City hereby employs Employee as City Attorney of City to perform the functions and duties of the City Attorney as specified in City's Municipal Code and to perform such other legally permissible and proper duties and functions as the City Council may from time to time assign to Employee. Employee agrees to devote Employee's full time and effort to the performance of this Agreement and to remain in the exclusive employ of City and not to become otherwise employed while this Agreement is in effect without the prior written approval of the City Council.

2. Hours of Work. Employee shall maintain a regular work schedule of 8 hours per day, Monday through Friday. Employee's duties may involve expenditures of time in excess of eight (8) hours per day and/or forty (40) hours per week, and may also include time outside normal office hours such as attendance at City Council meetings. Employee shall not be entitled to additional compensation for such time.

3. Term. This Agreement shall be effective on the Effective Date and will remain in force and effect until terminated as provided herein.

4. Salary. Employee shall be paid an annual salary of \$190,500, payable twice monthly at the same time other management employees of the City are paid. Salary and/or

benefit adjustments shall be considered by the City Council annually in conjunction with Employee's annual performance evaluation pursuant to paragraph 11 of this Agreement. City shall not, at any time during the term of this Agreement, reduce Employee's salary or benefits unless such reduction is imposed across-the-board for all unrepresented management employees of the City. Employee shall be eligible for the same salary and benefits increase offered to other unrepresented management employees of the City in each year in which he meets the objectives established pursuant to paragraph 11 of this Agreement and, in the discretion of the Council may receive a larger increase than other unrepresented management employees of the City to recognize exceptional performance.

5. Automobile Allowance. City shall provide Employee with an annual automobile allowance of \$4,800, which Employee acknowledges is subject to taxation. Employee shall be responsible for paying for all liability, property damage, and comprehensive insurance and for the purchase, operation, maintenance, repair, and replacement of his automobile.

6. Retirement and Deferred Compensation. City shall contribute the employer's share of the cost of membership in the Public Employees Retirement System (PERS) during the term of this Agreement including PERS Survivor benefits at the 4th level. Employee shall contribute the employee's share, presently 7%, of the cost of membership in PERS. City shall also make available to Employee a qualified deferred compensation program under Internal Revenue Code Section 457, and will annually contribute 4% of Employee's base salary to that plan. The City Council may choose to increase the contribution after the Employee has reached one year of service to the City. Employee will vest the right to post-retirement medical benefits under City policies after 10 years of service to the City.

7. Medical Insurance. City shall pay \$17,752.44 per year toward a cafeteria plan for medical insurance for Employee and Employee's dependents and the use of that sum shall be governed by the terms of that plan as they now exist or as they may be changed provided, however, that Employee will be afforded no less generous a contribution to the cafeteria plan than are other unrepresented management employees of the City.

8. Dental and Vision Insurance. City shall pay the monthly premiums for dental insurance for Employee and Employee's dependents at \$1,544.88 per year. City shall provide a vision reimbursement plan to Employee in the amount of \$228 per year. Employee shall receive premium support in any sums greater than these as the City may afford other unrepresented management employees of the City.

9. Other Benefits. City shall provide Employee any other benefits mandated by state or federal law. City shall also provide Employee with a life insurance policy in the amount of \$350,000, and shall pay the premiums for that insurance. Except where otherwise provided by this Agreement, Employee shall be entitled those benefits provided to unrepresented management employees of the City as they now exist or may hereafter be altered during the term of this Agreement.

10. General Expenses and Professional Development. City recognizes that Employee will incur expenses of a non-personal and job-related nature. City agrees to reimburse

Employee for reasonable expenses which are authorized by the City budget, submitted to the City Council for approval, and which are supported by expense receipts, statements or personal affidavits, and audit thereof in like manner as other demands against the City. By way of example and without limitation, City recognizes Employee's need to maintain State Bar licensure and to comply with the Continuing Legal Education requirements of the State Bar and Employee's need to participate in the City Attorneys Department of the League of California Cities and other professional organizations to maintain his skills, education and value to the City. City agrees to budget sums reasonable in light of available revenues and other claims on those revenues to allow Employee to satisfy these needs and to fund the cost of any bond which might be required of Employee by the Council or by law. In addition, City agrees to supply Employee with a cellular phone (or an allowance consistent with any provided for other unrepresented management employees of the City) and lap top computer for use in his service to the City, each of which shall remain property of the City.

11. Performance Evaluation. The City Council shall evaluate Employee's performance at least once annually. The City Council and Employee shall annually develop mutually agreeable performance goals and criteria that the City Council shall use in evaluating Employee's performance in the following year. It shall be Employee's responsibility to initiate this evaluation each year. Employee will be afforded an adequate opportunity to discuss each evaluation with the City Council.

12. Indemnification. City shall defend, hold harmless and indemnify Employee against any claim, demand, judgment, or action of any type or kind arising within the course and scope of Employee's employment to the extent required by Government Code Sections 825 and 995.

13. Other Terms and Conditions of Employment.

(A) The City Council may from time to time fix other terms and conditions of employment relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Municipal Code, or other applicable law.

(B) The provisions of the City's Personnel Rules and Regulations ("Rules") shall apply to Employee to the extent they explicitly apply to department heads and directors, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon Employee a property right in Employee's employment or a right to be discharged only upon cause during Employee's tenure as City Attorney. At such times as Employee is serving as City Attorney, Employee is an at-will employee serving at the pleasure of the Council and may be dismissed at any time with or without cause, subject only to the provisions of this Agreement.

(C) General Leave. For purposes of calculating General Leave, Employee shall be deemed to have served the City for five years prior to the Effective Date. Accordingly, in his first year of employment, Employee shall be entitled to 216 hours of General Leave with

pay per year. Employee shall receive 40 hours of accrued General Leave upon hire. Employee may accrue up to 1,040 hours of General Leave and, once having accrued that amount, shall accrue no further General Leave under this Agreement until he uses General Leave to reduce his accrued balance. Employee may cash out up to 60 hours per year of Employee's General Leave accrual.

(D) Administrative Leave. Employee shall be entitled to 80 hours of administrative leave with pay per year, provided at the beginning of every calendar year. Employee shall receive 40 hours of accrued Administrative Leave upon hire. Employee may not cash out unused administrative leave upon termination of this Agreement. Employee may not carry over unused administrative leave from year to year.

(E) Employee shall be exempt from paid overtime compensation and from Social Security taxes other than the mandatory Medicare portion of such taxes.

(F) Holidays; Floating Holidays. Employee shall be entitled to twelve paid holidays pursuant to City policy per year. For purposes of entitlement to Floating Holidays, Employee shall be deemed to have served the City for one year prior to the Effective Date. Accordingly, Employee shall be entitled to two floating holidays in his first year of service to the City. Floating holidays may not be cashed out or carried over.

14. General Provisions.

(A) This Agreement constitutes the entire agreement between the parties. City and Employee hereby acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement. This Agreement may be amended only by a writing signed by Employee, approved by the City Council, and executed on behalf of the City.

(B) If any provision or any portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of the Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.

(C) Other than during the 90 days following any change in the membership of the City Council of City (during which time Employee may resign but may not be terminated without such cause as is defined in paragraph 15 below), this Agreement may be terminated by either party with or without notice and with or without cause subject only to the requirements of paragraph 15 below regarding severance. Notice of termination to City shall be given in writing to City, either by personal service or by registered or certified mail, postage prepaid, addressed to City as follows:

Mayor
City of Belmont
One Twin Pines Lane
Belmont, CA 94002.

Any notice to Employee shall be given in a like manner, and, if mailed, shall be addressed to Employee at the address then shown in City's personnel records. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to have duly given (a) on the date of delivery, if served personally on the party to whom notice is to be given, or (b) on the second (2nd) calendar day after mailing, if mailed in the manner provided in this paragraph to the party to whom notice is to be given. Notwithstanding the forgoing, this Agreement shall automatically terminate on the death or permanent disability of Employee and Employee agrees to make best efforts to give City not less than 30 days' written notice of his resignation.

(D) If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party in that action shall be entitled to reasonable and actual attorneys' fees and costs with respect to the prosecution or defense of the action.

(E) A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver by the City and the City shall be free to enforce any term or condition of this Agreement with or without notice to Employee notwithstanding any prior waiver of that term or condition.

15. Severance.

- (A) If City terminates this Contract without cause (as defined in this paragraph) prior to the third anniversary of the Effective Date, then City shall pay Employee severance equal to eight months' base salary, in the amount in effect at the time the notice of termination is given. If City terminates this Contract without cause (as defined in this paragraph) after the third anniversary of the Effective Date, then City shall pay Employee severance equal to six months' base salary, in the amount in effect at the time the notice of termination is given plus one month's additional severance for each year of service Employee completes after that third anniversary and prior to termination, to a maximum of 9 months' severance.
- (B) The City shall have cause to terminate Employee without payment of severance under this paragraph 15 if Employee engages in any of the following conduct, each of which shall constitute "cause" for termination within the meaning of this Agreement: theft or destruction of City property; conviction of a felony, or of a misdemeanor adversely reflecting on Employee's fitness to perform assigned duties; unauthorized absence from employment or abuse of leave privileges; reporting for work, or being at work, under the influence of, or in the possession of, alcoholic beverages, or non-prescribed "controlled substances" as that term is defined in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 as amended to date (excluding alcoholic beverages provided by the City at a social or ceremonial event or at a conference or in another professional setting in which alcohol is served by or at the behest of the event sponsor or host); improper or unauthorized use of City funds or City

property; acceptance by Employee of any valuable consideration from any person or entity other than the City for the regular performance of Employee's duties; engaging in harassment prohibited by state or federal law; or any actual suspension of his license to practice law in California.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

EMPLOYEE

Scott M. Rennie

CITY OF BELMONT

ATTEST:

Terri Cook
CITY CLERK

Coralin Feierbach
MAYOR

Approved as to form:

Michael G. Colantuono
SPECIAL COUNSEL